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NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCALS 329 AND 851, AFL-CIO, ET AL,
Petitioners

versus

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONER'S PETITION FOR CERTIORARI

BRIEF FOR PETITIONERS

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71PP

QUESTIONS PRESENTED

WHETHER THE RATIO-RANK FORMULA RECOMMENDED BY THE COURTS BELOW AS THE MOST EQUITABLE MANNER OF MERGING THE SENIORITY LIST OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCALS 307, 329, 851 and 1576 IS THE FAIREST METHOD OF MERGING THE SENIORITY LIST IN LIGHT OF THE VASTLY DIFFERENT SENIORITY STANDARDS EMPLOYED BY THE LOCALS PRIOR TO THE MERGER.

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versus

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONER'S PETITION FOR CERTIORARI

BRIEF FOR PETITIONERS

OPINION BELOW

The opinion of the Court of Appeals below (Appendix A, infra) was not reported. The interim order in the case below in District Court entered on the 22nd day of March, 1983, was not reported.

JURISDICTIONAL GROUNDS IN THIS COURT

The judgment of the Court below (Appendix A, infra), was entered on October 17, 1984. Rehearing was not sought. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) (1966 and Supp. 1984).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fifth Amendment, United States Constitution, which provides:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law; . . ."

2. The Fourteenth Amendment, § 1, United States Constitution, which provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. The Statute under which the Petitioners were found to have violated the civil rights of its workers through the maintenance of segregated unions was Title VII of the Civil Rights Act of 1964 § 2000e, et seq. 42 U.S.C. § 2000e-2(c)(2) (1966) which provides the following:

(c) It shall be an unlawful employment practice for a labor organization—

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or natural origin; . . ."

4. The statute which upholds the validity of the different standards employed by each Local to compute seniority prior to the merger is found at 42 U.S.C. § 2000e-2(h) which provides:

"(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, . . ."

STATEMENT OF THE CASE

A. Course of Proceedings in the Title VII Litigation Currently Pending Before This Court.

The Fifth Circuit on April 11, 1975, in *Equal Employment Opportunity Commission v. International Longshoremen's Association, et al.*, 511 F.2d 273 (5th Cir.

1975) issued its mandate requiring the merger of segregated local unions chartered by the Longshoremen's Association. In compliance with this mandate, the United States District Court issued an interim order permanently enjoining the International Longshoremen's Association, the International Longshoremen's Association South Atlantic and Gulf Coast District and various locals from maintaining segregated locals. (This interim order filed August 26, 1982 is attached hereto as Appendix C, infra). This interim order approved an earlier order issued by Master White (Appendix D. infra) which ordered the merger of the four Galveston Locals 1576, 307, 329 and 851. The interim order issued by Master White required the locals to recognize the years of seniority credited by each of the other three locals to its respective members.

After the Locals were ordered to merge on August 26, 1982, the International Longshoremen's Association District submitted a memorandum in support of its recommendations regarding the merger and the Locals filed objections and responses. The International Longshoremen's Association District recommended the merger of the list pursuant to a ratio-rank approach. The District Court approved the recommendation of the International Longshoremen's Association District regarding the ratio-rank approach for the merger of the Locals on March 22, 1983. Local 851, one of the defendant Locals, gave Notice of Appeal to the Fifth Circuit Court of Appeals of the District Court order relating to the ratio-rank formulation for merging the seniority lists. (Appendix B, infra).

On October 17, 1984, the District Court order relating to the merger of the lists using the ratio-rank formulation was affirmed by the Fifth Circuit Court of Appeals in a per curiam opinion. (Appendix A, infra).

B. Relevant Facts Concerning the Underlying Merger Order.

The United States[1] in 1969 filed an action naming the International Longshoremen's Association, the South Atlantic and Gulf Coast District of the Association and 37 local unions as defendants. In a complaint charging defendants with a violation of the civil rights of the various employees of the local unions (hereinafter "locals") in derogation of rights secured by Title VII of the Civil Rights Act of 1964, the United States charged that various practices including the maintenance of segregated locals and hiring halls perpetuated past discrimination. With the advent of *Brown v. Board of Education,* 347 U.S. 483 (1954) and several other Supreme Court decisions eroding the accepted existence of racially separate facilities, the maintenance of segregated locals in this instance had to fall. Consequently, the Fifth Circuit ordered the merger of the locals in *Equal Employment Opportunity Commission v. International Longshoremen's Association,* 511 F.2d 273 (5th Circuit 1975).

Pursuant to this merger order, the parties began negotiations concerning the method to be used to merge the seniority lists of the four Galveston locals. The International Longshoremen's Association District submitted a proposal that recommended that an equitable merger could be reached if the ratio-rank principle were applied to the merger. This principle recognizes the amount or percentage of employees each group brings to the merger,

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1. This suit was originally brought by the Attorney General. Effective as of March, 1974, this jurisdiction was transferred to the Equal Employment Opportunity Commission by 42 U.S.C. § 2000e-6(c). Section 2000e-6(d) continued without abatement all suits brought by the Attorney General by substituting the Commission as a party.

and integrates the list based upon the ratio. For instance if group A consists of 200 persons and list B consists of 100, the ratio is 2 to 1. Therefore the first three names on the list would consist of two names from group A and one name from group B. As among the three employees, length of service may be used to determine which employee gets each of the first three places. The problem in this instance narrows and centers around what constitutes length of service in each of the four locals.

The four locals are 1576, 307, 329 and 851. The racial composition is 1576 (Mexican), 307 (Anglo), 851 and 329 (Black) and the ratio of employees that each is bringing to the merger is 34%, 35%, 21% and 9%.

Prior to the merger each local had allocated varying amounts of man hours that would constitute a year's seniority. Local 1576, (the banana local) specialized in the loading and unloading of green fruit and had very lax standards for computing seniority because there was not that much work. This local has been in existence since 1937 but has only been viable since 1968. Prior to 1968, any employee who worked one boat per year was given seniority. In 1968, the requirement was increased to twenty boats per year and in 1972, a standard of 300 hours per year was adopted.

The other three locals had more stringent requirements for seniority credit, but there was some variation in those standards. Locals 307 and 851 required 500 hours prior to 1951, and 700 hours per year thereafter. Local 329 has always required 400 hours per year.

Local 1576 has always maintained that its seniority should be fully recognized, while the other locals asserted

that full recognition would place men with less experience before men with continuous employment in the industry on the seniority list. The seniority lists in this case is not only important in determining post-employment benefits but is important daily in assessing priorities in hiring.

The ratio-rank formula would place the employees in 1576 on equal footing with other longshoremen whose local adhered to more stringent standards in assessing seniority. Objections were filed by the Locals involved in this case to the use of the ratio-rank approach, but the District Court and Court of Appeals upheld this formula as initially submitted by the International Longshoremen's Association District. It is suggested here that another method, either the follow the work approach, or length of service formula would be a more equitable resolution of the problem presented by the merging of the seniority lists.

EXISTENCE OF JURISDICTION

The four unions to the merger order here were Locals 1576, 307, 851 and 329, all operating out of the port of Galveston. The District Court on March 22, 1983 ordered the Locals to use a ratio-rank formulation for determining the order of names on the merged list.

The Court of Appeals for the Fifth Circuit in affirming the judgment rendered by the District Court failed to equitably assess the loss of vested seniority rights by workers displaced by persons with less seniority and has so far departed from the accepted and usual course of judicial proceedings as to call for this Court's power of supervision. The decision also conflicts with *Firefighters Local Union v. Carl W. Stotts,* 52 U.S.L.W. 4757 decided by this Court on June 12, 1984.

SUBSTANTIALITY OF QUESTIONS PRESENTED

Opposition to the merger of Galveston Locals 1576, 307, 851 and 329 would be futile and it is only reasonable that this remaining vestige of discrimination in the form of segregated locals be removed from the waterfront. Consequently, the merger of the previously segregated unions is not opposed. The challenge to the Court's judgment in this instance is directed to the divestment of seniority rights that inured to the disadvantage of the petitioners through an application by the Court of the ratio-rank system to facilitate the merger of union seniority lists.

Seniority is usually defined as the measure of time with an employer, plant, department, or job. The system usually contains rules of when and how to apply the specific seniority date. *Seniority Systems in The Post Teamster Era,* LAB. L.J. 30: 545-58 (1979). Seniority within the context of a discrimination suit pursuant to Title VII usually focused on the loss of seniority when workers transferred between departments within the same company or upon merger of one subsidiary with another. *Teamsters v. United States,* 431 U.S. 324 (1977); *United States v. East Texas Motor Freight Systems,* 564 F.2d 179 (5th Cir. 1977); *Beiski v. Eastern Automobile Forwarding Company,* 354 F.2d 414 (3rd Cir. 1965). Seniority in the context of those cases was important in assessing eligibility for post-employment benefits. Unlike those cases, seniority within the context of this case also in addition to determining eligibility for post-employment benefits, determines the order of hiring in each port. In order to be hired for any job in the Galveston port, all of the employees who desire work on that day, report at the union hall at the designated starting time. The persons who report

for work are then placed in classifications based solely on seniority and the hiring is done with preference being given in order of seniority classification.

This hiring system is important in that persons who have provided lengthy, continuous service in the industry are rewarded by being assured of work. This system is also valuable to the industry in that it assures that the jobs which are extremely hazardous in many instances are handled by experienced workers. Therefore, hiring the workers in a preference order based on seniority enhances the safety to the workers by assuring the presence of experienced workers on any given project.

This Court in *Firefighters Local Union v. Stotts,* 52 U.S.L.W. 476 (1984) emphasized the importance of seniority rights and the benefit that the senior employee in the work environment is entitled to. The case held that a contractual seniority system must control when there is a conflict with a consent decree obtained under Title VII of the Civil Rights Act.

The plaintiffs in that case were two blacks, one holding a position as Firefighter Captain and the other a private. The complaint charged the Memphis Fire Department and other city officials of engaging in a pattern or practice of discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as well as 42 U.S.C. § 1981 and 1983. This action resulted in the parties approval of a consent decree in 1980. The purpose of the decree was to remedy hiring and promotion policies "of the department with respect to Blacks". *Stotts* at 4768. This 1980 decree was similar to an earlier decree entered in 1974 which settled a case brought against the city by the United States. Neither

decree made any provisions regarding layoffs or reduction in rank, and neither awarded competitive seniority. Thereafter, the city announced that budget deficits would require a reduction of non-essential personnel in city government. Layoffs were to be based on "last hired, first fired rule" under which city wide seniority, was to be determined by each employee's length of continuous service from the latest date of permanent employment. After the city announced this reduction, on May 4, the District Court at respondent's request entered a temporary restraining order forbidding the layoff of any Black employee. In response to this injunction the city developed a modified layoff plan in attempting to comply with the consent decree. In certain instances, to comply with the injunction, non-minority employees with more seniority than minority employees were laid off or demoted. The Court of Appeals upheld this action under general contract principles that the City had agreed to increase the number of Blacks employed and that the layoffs as proposed would breach the contract.

The issue of the heart of the case was "whether the District Court exceeded its power in entering an injunction requiring white employees to be laid off, when the otherwise applicable seniority system would have called for the layoff of Black employees with less seniority." *Stotts* at 4770. In ruling that the District Court had exceeded its powers this Court reasoned that there was no mention of layoffs or any expressed desire to do away with the existing system of seniority in that consent decree. The decree which had the stated purpose of remedying past hiring and promotion practices did not include the displacement of white employees with seniority over blacks. *Stotts* at 4770. Furthermore the relief pro-

vided pursuant to the decree could not exceed the remedies provided by Title VII of the 1964 Civil Rights Act. Section 703(h) protects bona fide seniority systems by providing that: "it is not an unlawful employment practice to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority system, provided such differences are not the result of an intention to discriminate on the basis of race." In substance this Court recognized that accrued seniority rights pursuant to a bona fide seniority system are protected by Title VII absent an intent to discriminate, and that any relief provided under the act does not extend to bumping employees previously occupying jobs. *Franks v. Bowman Transportation Co.*, 424 U.S. 947 (1976); *Teamsters v. United States*, 431 U.S. 324 (1977); *Patterson v. American Tobacco Co.*, 535 F.2d 257, 267 (4th Cir. 1976) cert. denied, 429 U.S. 920 (1976); *Local 189, United Papermakers and Paperworkers v. United States*, 416 F.2d 980, 988 (5th Cir. 1969); cert. denied, 397 U.S. 919 (1970).

Stotts provides some guidance for the Court here in determining whether the lower court's attempt to comply with the interim order issued March 22, 1983, requiring merger should be construed to allow divestment of petitioners' seniority rights. The interlocutory decree (Appendix E, infra), required the defendants to merge in order to achieve full compliance with Title VII of the Civil Rights Act of 1964. However, the District Court in its interlocutory decree and supporting memorandum (Appendix F) realized that seniority would present a problem in forming an equitable decree. The reason for this is that the basic hours that the longshoremen have

been required to work to become entitled to a year's seniority has differed greatly from one local to another. Also stressed in the supporting memorandum was that in formulating an equitable decree, the Court had to be mindful of protecting the rights of those who have spent their lives on the waterfront, as compared to those who only work the waterfront as a sideline. This recognition by the Court in entering its merger order would seem to indicate that although relief under Title VII was warranted, this relief did not extend to violating the seniority rights of those longshoremen who in the Court's own words, "had spent their lives on the waterfront." This rationale is also in accordance with *Stotts* in recognizing that compliance with Title VII should not extend to disrupting seniority rights. Title VII was enacted pursuant to constitutional guarantees found in the 5th and 14th Amendment which embody each individual's right to not be deprived of life, liberty, or property without due process of law. Consequently, Title VII as the statutory enactment of the Constitutional mandate that persons be secure in their life, liberty, or property does not extend to robbing employees of vested property rights in the form of employment. (*See: Tomanio v. Board of Regents of University of State of New York,* 603 F.2d 255 (2nd Cir. 1979), reversed on other grounds 446 U.S. 478 (1980), holding that a person's interest in the continued practice of their chosen profession is a "property right" within the protection of the Fourteenth Amendment and may also be "liberty" thereunder).

Therefore the petitioners here who stand to lose seniority rights in the longshoremen industry stand to lose more than post-employment benefits, but their rights to continued daily employment. Under the authority of *Stotts,*

it cannot be reasonably asserted that the relief ordered in compliance with Title VII requiring merger extends to the formulation of a merger plan that divests seniority rights.

a. Formulation of an Equitable Merger Plan.

The Court below affirmed a merger formula using a ratio-rank formula to protect the rights of the members of the four locals. Under this system the percentage of employees brought to a merger is determinative of the order of names on the merged list. Here, Local 307 will be bringing 35%; Local 329 will bring 9%; Local 851 will bring 21%; and 1576 will bring 34%. Merger of the list in this manner with full recognition of the seniority on the various lists will result in many 1576 employees placement above 851 and 329 employees who are bringing a smaller percentage of employees to the merger. Merging the list in this manner would be equitable if the basis of accumulating seniority in the four locals had been equal, however, the methods have vastly differed.

Local 1576 had the most lenient standards of computing the number of hours worked that would constitute a year's seniority. Prior to 1968 any employee in that local who worked one boat per year was given credit for one year's seniority. This was later increased to twenty boats per year and in 1972 a standard of 300 hours per year was adopted. Local 329 always required 400 hours per year and Locals 307 and 851 required 500 hours to 1951 and 700 per year thereafter.

These four locals were divided along racial lines. Local 1576 was the Mexican-American Local and pursuant to its charter handled only green fruit. Local 329 was

a "deep sea" local, (a deep sea local handles a wide range of cargo) that only served four stevedoring companies. Locals 307 and 851 were Anglo and Black respectively and split the remaining work 50-50. In light of this examination of the facts it is apparent that a merger of the seniority lists in a manner that is equitable is at best difficult.

Petitioners, members of Local 851 assert that instead of rank ratio formula proposed, which results in a windfall to employees of Local 1576 whose full seniority rights will be recognized, a follow the work principle should be employed.

Under the follow the work principle, when there is a merger, the workers may be given the opportunity to follow the work they previously performed with the seniority rights to such work protected. The rationale behind the follow the work principle is that it prevents the consolidation from resulting in windfalls to some employees at the expense of other employees. There is some problem in the application of this principle. One question is whether it is better to merge the list or to continue them as separate lists. If the work that each group brings to the consolidation can remain distinct and separate, separate seniority lists may be the easiest solution. *See:* Kennedy, "Merging Seniority Lists", *Labor Arbitration and Industrial Change,* 1-34 (BNS Incorporated, 1963). However, the operation of four lists would seem to do violence to the idea of merger. It would be possible under this principle to integrate the list on a ratio representing the amount of work brought to the consolidation by each group. In some cases it is quite difficult to determine the percentage of work in the consolidation that each group brings to it. In this instance,

in light of the past work performed by each of the four locals both Locals 1576 and 329 are bringing a smaller percentage of the work to the merger than are Locals 307 and 851. Applying the follow the work principle the seniority list could be merged so that, for instance, if the first four names are to be merged, they should be merged with employees from 851 and 307 listed first and second. Third and fourth place would then go to 329 in light of its past limitation to only four stevedoring companies and then to 1576 due to its past work and seniority requirements.

A second alternative for the merger of the list would be a length of service principle. Under this principle, a combined seniority list is prepared by placing employees on the new list in the order of their length of service regardless of which group the employees work for prior to the merger. All employees are thus treated as if they had always been employed by the same company. *How Arbitration Works,* Third Edition, Frank and Edna Elkouri, 564-67. Either of the above principles would seem to be more equitable than the ratio-rank system upheld below. The application of either would put an end to the conflict among the employees and provide a solution with a rationale basis that does not do violence to the rights of any group.

CONCLUSION

The courts below failed to adequately protect the rights of workers who have continually worked and been employed as longshoremen. While efforts to comply with the interlocutory decree entered in this Title VII case require merger, the efforts at compliance should not re-

quire a merger that deplaces senior employees who have vested property and liberty rights at stake. Under the *Stotts* case Title VII relief does not extend to disrupting seniority systems that were in all respects bona fide and not formulated with any discriminatory or illegal purpose. The merger system using a ratio-rank approach deprives the more experienced workers of seniority rights that not only determine their right to post-employment benefits but their right to daily employment. Consequently, a fairer and more equitable approach under either the follow-the-work principle or length-of-service principle would serve both the interest of assuring a stoppage of discrimination as prohibited by Title VII and the workers interest in vested seniority rights. This Petition for Certiorari should therefore be granted.

Respectfully submitted,

WASHINGTON & RANDLE

By: _____

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

By my signature below, I do hereby certify that on the 17th day of December, 1984, a true and correct copy of the foregoing Petition for Writ of Ceritorari was furnished by United States mail to the following:

(1) Mr. James R. Watson, Jr.,
Bray & Watson
1445 North Loop West, Suite 800
Houston, Texas 77008

(2) Ms. Elaine Bloomfield
Equal Employment Opportunity Commission
2401 E. Street, N. W.
Washington, D.C. 20506

(3) Mr. John Thoma
Cotton Exchange Building
Galveston, Texas 77550

(4) Mr. Sidney Ravkind
Mandell & Wright
21st Floor, 806 Main Street
Houston, Texas 77002

(5) Mr. Robert M. Moore
Robert M. Moore & Associates
7511 Broadway
Galveston, Texas 77551

LARRY Q. EVANS

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,
Plaintiff-Appellee,

v.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, ET AL.,
Defendants

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION LOCALS 329 and
851, AFL-CIO, ET AL.,
Defendants-Appellants.

Appeals from the United States District Court for the
Southern District of Texas

(October 17, 1984)

Before CLARK, Chief Judge, JOHNSON and WILLIAMS, Circuit Judges.

PER CURIAM:*

Preserving work expectancies through use of the ratio-rank formulation for merger of seniority lists of existing

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule the court has determined that this opinion should not be published.

unions into new Local 20 at the Port of Galveston was a fair resolution of the equitable issues presented to the district court. This remedy was within the ambit of the district court's discretion. The judgment appeals from it

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION NUMBER 69-B-3(G)
This pertains to the Port of Galveston only

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Plaintiff,

v.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, an unincorporated
association, et al
Defendant

(Filed March 30, 1983)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that I.L.A. LOCAL 851, one of the defendants in the above referenced cause, hereby appeals to the United States Court of Appeals for the 5th Circuit from the portion of the Order entered on the 22nd day of March, 1983, specifically and only to paragraphs, *Port of Galveston,* paragraphs a, b, (1) and (2) on pages 19, 20, and 21, all relating to the findings of the Court and the criteria, method and manner of

merging the seniority lists of all four of the deep water locals in Galveston.

Respectfully submitted,

ROBERT M. MOORE &
ASSOCIATES

By: ROBERT M. MOORE
Robert M. Moore

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Attorneys for Defendant,
I.L.A. LOCAL 851

CERTIFICATE OF SERVICE

I do hereby certify that on this the _____ day of March, 1983, a true and correct copy of the foregoing NOTICE OF APPEAL was sent by United States mail, correctly addressed and postage prepaid to:

1. Mr. James R. Watson, Jr., Bray & Watson, 1445 North Loop West, Suite 800, Houston, Texas 77008, Attorney for the South Atlantic-Gulf Coast District, I.L.A.
2. Ms. Elaine Bloomfield, Equal Employment Opportunity Commission, 2401 E Street, N.W. Washington, D.C. 20506. Attorney for Plaintiff.
3. Mr. Leonard Cruse, Martin, Carmona, Cruse & Micks, P. O. Box 1570, Galveston, Texas 77553, Attorney for I.L.A. Local 329.
4. Mr. James Patrick Cooney, Royston, Rayzor, Vickery & Williams, 2200 Texas Commerce Tower, Houston, Texas 77002, Attorney for West Gulf Maritime Association Intervenors.
5. Mr. Sidney Ravkind, Mandell & Wright, Twenty-First Floor, 608 Main Street, Houston, Texas 77002, Attorneys for I.L.A. Local 307.
6. Mr. Robert L. Penrice, 2000 Professional Building, Loop 197, Texas City, Texas 77590, Attorney for I.L.A. Local 1576.

PORTIONS OF DISTRCIT COURT ORDER

* * *

recommendation, involves an election timetable that is not workable in view of the April 1 deadline for merger. Therefore, the Court hereby approves and adopts Local 1818's proposal that the present officers of both existing locals shall remain in office during the interim period with shared responsibility for those offices.

g. The election of permanent officers shall be as provided in the approved Constitution and Bylaws.

h. The assets and liabilities of both locals shall be transferred to and assumed by the new local.

i. The Merger Committee's agreement regarding the service charge fee and dues has been recommended by the District. It is hereby approved and adopted.

5. *Port of Galveston*

a. The port of Galveston has presented special problems and vigorously disputed merger issues since the inception of his lawsuit. In this port, four deep sea locals are merging. The white local, Local 307, has 35% of the total number of the deep sea longshoremen in Galveston and currently performs 38% of the work in that port.[4] Local 329, one of two black locals, has 9% of the longshoremen and performs 6% of the work. Local 851, the other black local, has 21% of the longshoremen and performs 30% of the work. Local 1576, a Mexican-American local, has 34% of the total number of longshoremen and has performed 26% of the longshoring work in that port, over the last three years. Local 1576, the so-called "Banana local," has a green-fruit charter

and presently performs only that kind of work. It is undisputed that at this time, the green-fruit work in this port is increasing annually, while all other longshoring work is decreasing. This situation is markedly different than that which existed earlier in this case. A special hearing was held in Galveston on January 28, 1983, to resolve the hiring hall question and for argument on other merger issues.

b. The Merger Committee has not been able to agree on a method for merging the four seniority rosters. The District, in its December 6, 1982, Recommended Plan of Merger for the Port of Galveston, recommended a ratio-rank approach. This formula accepts every longshoreman's seniority in his own former local as valid. It precludes a windfall or a loss to any group. Given the unique relationship and history among the various locals in Galveston, and the fact that Local 1576 is actually "bringing" work to the merger that was not heretofore available to members of other locals, the Court finds that the application of the ratio-rank method would effect the fairest merger of seniority lists in Galveston.

Therefore, the Galveston Merger Committee, with the assistance of the District, is ordered to merge the seniority lists of Locals 307, 329, 851 and 1576 in the following manner:

(1) *Step 1:* Combine the seniority lists of the two black locals, Locals 329 and 851, using a straight length of service procedure. Decide all ties by lot. This will essentially equalize the black and white general cargo deep sea locals, both in terms of size and work performed.

(2) *Step 2:* Merge the three resulting seniority lists, applying the ratio-rank method. Ties within an existing

union in rank should be decided by lot. Ties among longshoremen from different existing locals in forming the composite merged list should be decided by length of service first, then by lot. There is to be no "reclassification" of any local's seniority list. No local's seniority is to be discredited because of varying standards.

c. The hiring hall question has previously been resolved by this Court. Local 851's hiring hall shall be used by the new merged local.

d. The written hiring hall procedures as proposed by the Merger Committee and recommended by the District, shall be reformed as necessary to conform to the merged seniority roster compiled pursuant to subparagraph b above, and to give full credit for the seniority each longshoreman validly earned in his existing local. A copy of this redrafted hiring hall procedure will be filed with the Court by the District no later than March 28, 1983, along with the District's recommendation for approval.

e. The proposed Constitution and Bylaws for the new local, as amended pursuant to the Watson letter to the Court of February 4, 1983, and the Merger Committee letter to the District of February 21, 1983, are hereby approved and adopted.

Objections have been filed by individual locals as to Bylaw provisions allowing retirees to vote and regarding the amount of pay for officers of the new local. The Court believes that these are internal organizational matters best decided by the Merger Committee, not a federal court. They do not directly bear upon the purpose of the merger. Therefore, the Court will not second-guess the Merger Committee on those questions.

f. The Galveston Merger Committee elected interim officers from the Merger Committee membership. An objection to this election has been made by locals 851 and 329. The District recommended approval of the elected officers and their amount of pay. The Court finds nothing in the Galveston Merger Committee's provision for interim government which violates either the letter or spirit of the August 26 Order or affects the goals of the merger. The Merger committee's proposals are hereby approved and adopted.

g. The Merger Committee's agreement that the election of permanent officers will be in accordance with the new Constitution and Bylaws is approved and adopted. Nomination and election of permanent officers shall take place in November and December of 1983 respectively.

h. The Merger Committee agreed on the transfer of assets and liabilities to the new local. Their agreement is approved and adopted.

i. The Merger Committee's agreement as to a 5% service charge fee and dues as set forth in the new Constitution and Bylaws is approved and adopted.

j. Other merger issues pertaining to burial plans, insurance, and credit union membership are to be resolved by the Merger Committee, or after April 1 by the interim officers, and executive board, in a nondiscriminatory manner.

6. *Port of Houston—Deep Sea Locals*

a. Two large deep sea locals are being merged in the Port of Houston. Each has just over 1,000 classified long-

shoremen. They have been splitting the work of this port 50-50.

b. The most serious controversy in this port has revolved around the seniority roster. The two Masters appointed for the Houston Deep Sea Locals, after five years of proceedings, compiled an accurate seniority list for each local through fiscal year 1979. These component lists were certified to the Court as accurate, both as to the listing of classified longshoremen and the correct credited years of seniority for past service rendered by each longshoreman according to the applicable rules and standards of his local. The Masters' component seniority lists are hereby adopted as final by this Court. Both locals have subsequently updated their component lists through fiscal year 1982.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 69-B-3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, et al., Defendants

(Filed August 26, 1982)

INTERIM ORDER

In compliance with the Fifth Circuit Court of Appeal's mandate of April 11, 1975, 511 F.2d 273, *cert. denied,* 423 U.S. 994 (1975) the Defendants herein—the International Longshoremen's Association ("the International"), the I.L.A. South Atlantic and Gulf Coast District ("the District"), and I.L.A. Locals 1367, 1368, 1758, 1763, 1723, 1818, 307, 329, 851, 1576, 636, 991, 1406, 872, 1273, 1330, 1331, 1525, 1581, 325, 1306, 1610, 341, 814, 1029, 1175, 440, 1224, 1225, 1280 and 1281—are hereby permanently enjoined and restrained from discriminating against persons in employment opportunities by the maintenance of separate local unions and hiring halls in the ports of Texas on the basis of race, color, or ethnic background, and from engaging in any act or practice which has the purpose or effect of discriminating against individuals on account of their race, color, or ethnic background.

Each Defendant Local is hereby declared merged with its sister Local(s) in the same port as follows:

Beaumont	—	Locals 325, 1306, and 1610
Brownsville	—	Locals 1367 and 1368
Corpus Christi	—	Locals 1224, 1225, 1280 and 1281
Freeport	—	Locals 1723 and 1818
Galveston	—	Locals 307, 329, 851 and 1576
Houston		
Deep Sea	—	Locals 872 and 1273
Warehouse	—	Locals 1330, 1331, 1525 and 1581
Orange	—	Locals 341 and 814
Port Arthur	—	Locals 1029 and 1175
Port Lavaca	—	Locals 1758 and 1763
Texas City	—	Locals 636 and 991

Defendant Local 440 in Port Arthur, Texas, the only warehouse local in that port, is not being ordered to merge with the two deep sea locals in Port Arthur, but will remain in the case for reporting and monitoring purposes. The Court is advised that Local 440 is an eqaul opportunity union and does not discriminate on the basis of race or color.

Local 1406 in Texas City, Texas, is reportedly inactive. It will be dismissed as a party to the suit as soon as the International certifies that its charter has been cancelled and its assets liquidated.

II.

The Masters are hereby relieved of further duties under the Orders of Reference dated March 11, 1977, and August 17, 1979. They will remain available to assist

the Court, the Plaintiff, or the I.L.A. District in an advisory capacity.

The prior work of the Masters has been most valuable to the Court and the Locals. The Masters' recommendations have been reviewed and are hereby approved and adopted as orders of this Court, including, but not necessarily limited to, the following matters:

A. *Port of Beaumont—Locals 325, 1306 and 1610:*

Dean White's interim order of January 22, 1981, is adopted as an Order of this Court. The Master's findings of fact, conclusions of law, and recommendations, embodied in a draft transmitted to this Court on September 24, 1981, are approved and adopted by the Court.

B. *Port of Brownsville—Locals 1367 and 1368:*

The Master's approval of the seniority lists and recommendation of the use of the gang system are approved and adopted by the Court as its Order.

C. *Port of Corpus Christi:*

1. *Deep Sea Locals 1224 and 1225:*

The Master's interim order of February 23, 1981, is adopted as the Court's Order.

2. *Warehouse Locals 1280 and 1281:*

No interim orders, findings, or recommendations appear to have been entered.

D. *Port of Freeport—Locals 1723 and 1818:*

No interim orders appear to have been entered.

E. *Port of Galveston—Locals 307, 329, 851 and 1576:*

The interim order made by Master White on March 12, 1981, in respect to a working merger of the Galveston Locals (Locals 307, 329, 851 and 1576) is hereby approved and ratified by the Court and shall be put into full effect by each of the Galveston Locals on September 1, 1982. Each Galveston Local from September 1, 1982, and until further order of the Court is to:

(a) Make information about work opportunities through its hiring hall available to members of the other three named locals as freely and as fully as it does to its own members;

(b) Give to the members of the other three locals access to its hiring hall and the privileges thereof as freely and as fully as it does to its own members;

(c) Accept for hiring through its hall the years of seniority credited by each of the other three locals to their respective members;

(d) Cause its foreman to hire members of the other locals when grouped with its own members according to seniority and without regard to race, religion, ethnic background or local affiliation.

F. *Port of Houston*

1. *Deep Sea Locals 872 and 1273:*

Masters Jefferson and White are directed to certify to the Court by September 3, 1982, the results of all proceedings before them pertaining to the senority questions at Locals 872 and 1273, including the certification of component senority lists and any and all agreements reached by these two locals. Past senority credits as de-

termined during such proceeding before the Masters are adopted as final by this Court.

2. *Warehouse Locals 1330, 1331, 1525 and 1581:*

There appear to be no interim orders regarding these Locals. The August 17, 1979, order of reference establishes, and by letter dated October 9, 1980, the Master further recommended, that all four warehouse locals be merged into one new local. This Court so orders.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION NO. 69-B-3

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,
Plaintiff

v.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, ET AL

INTERIM ORDER

Pursuant to the authority vested in me by the Order of Reference entered herein on August 17, 1979, as revised by the Court on February 1, 1980, reported hearings were held in Galveston, Texas on June 17, 1980 and September 18, 1980. Unreported hearings and conferences had previously been held and a further unreported hearing was held on March 12, 1981. At those hearings and conferences facts were presented and arguments were made. The Master has also entered orders herein for the performance of certain actions, one on July 21, 1980 and another on September 26, 1980. On the basis of the facts presented and the arguments made at said hearings and conferences, and the information presumed to have been developed in complying with said orders, it is found and ordered, pending the issuance of a final order herein, that I.L.A. Locals 1576, 307, 329 and 851 proceed as follows:

1. It is found that Longshoremen working out of I.L.A. Local 329 have long been at a disadvantage, when compared to men working out of I.L.A. Locals 1576, 307 and 851, with respect to work opportunities. There is simply less work per man available through this Local. Judge Garza and the Master have thus far respected the wishes of the Galveston Locals that they not be formally merged until the Houston Deep Sea Locals are merged. This makes it imperative that interim relief be given to men working out of Local 329.

* * *

3. Finally, it is found that the procedure hereinafter ordered will substantially eliminate the work opportunity injustice now experienced by members of I.L.A. Local 329 without encroaching on the announced policy of merging all Texas Locals at approximately the same time.

4. Each of I.L.A. Locals 1576, 307, 329 and 851 are, therefore, hereby ordered, effective April 1, 1981, to:

a. Make information about work opportunities through its hiring hall available to members of the other three named Locals as freely and as fully as it does to its own members.

b. Give to the members of the other three Locals access to its hiring hall and the privileges thereof as freely and as fully as it does to its own members.

c. To accept for hiring through its hall the years of seniority credited by each of the other three locals to their respective members.

d. Cause its foremen to hire members of the other Locals when grouped with its own members according to seniority and without regard to race, religion, ethnic background or Local affiliation.

The Committee constituted by the order of the Master dated July 21, 1980, plus two members from I.L.A. Local 1576 to be named by its President is hereby charged with the responsibility of implementing this Order.

Entered this the 12th day of March 1981.

/s/ A. A. WHITE
Master

APPENDIX E

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION NO. 69-B-3

UNITED STATES OF AMERICA,
Plaintiff

v.

INTERNATIONAL LONGSHORMEN'S ASSOCIATION, an unincorporated association; SOUTH ATLANTIC AND GULF COAST DISTRICT, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, an unincorporated association; and LOCALS 1367, 1368 and 1372, ILA, Brownsville, Texas; LOCALS 872, 1231, 1271, 1273, 1330, 1331, 1525, and 1581, ILA, Houston, Texas; LOCALS 325, 1306 and 1601, ILA Beaumont, Texas; LOCALS 307, 329, 851 and 1576, ILA, Galveston, Texas; LOCALS 1224, 1225, 1241, 1245, 1280 and 1281, ILA, Corpus Christi, Texas; LOCALS 1723 and 1818, ILA, Freeport, Texas; LOCALS 636, 991, 1405 and 1406, ILA, Texas City, Texas; LOCALS 440, 1029, and 1175, ILA, Port Arthur, Texas; LOCALS 341 and 814, ILA, Orange, Texas; and LOCALS 1758, and 1763, ILA, Port Lavaca, Texas, uincorporated associations,
Defendants

(Filed October 1, 1973)

INTERLOCUTORY DECREE

Pursuant to the "Memorandum' of this Court, which has been entered herein and constitutes the Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED and DECREED that said defendants are not required to merge in order to achieve full compliance with Title VII of the Civil Rights Act of 1964 and therefore such relief is hereby denied; and it is further ORDERED, ADJUDGED and DECREED that any violation of Title VII of the Civil Rights Act of 1964 can be fully corrected by the abolishment of separate hiring halls and the establishment of a common hiring hall on a port by port basis for each defendant local union which does the same kind of work, as herein set forth, within a period of ninety (90) days from a final Order entered herein, as follows:

I.

DEFENDANT LOCAL UNIONS WHICH MUST MERGE HIRING HALLS WITH EACH OTHER

Port	*Locals to Merge Hiring Halls*
Beaumont	325, 1306 and 1610
Brownsville	1367, 1368 and 1372
Corpus Christi	1224 and 1225
Corpus Christi	1280 and 1281
Freeport	1723 and 1818
Galveston	307, 329, 851 and 1576
Houston	872 and 1273
Houston	1330 and 1331
Houston	1525 and 1581
Orange	341 and 814
Port Arthur	1029 and 1175
Port Lavaca	1758 and 1763
Texas City	636 and 991

II.

COMMON SENIORITY CLASSIFICATIONS

During the ninety (90) days period heretofore described, the defendant local unions that are required to operate a common hiring hall shall adopt a common seniority classification and hiring hall plan and prepare a list of qualified, regular gang foremen on a port by port basis in compliance with Title VII of the Civil Rights Act of 1964 for approval by this Court, using the following standards:

1. No active longshoreman's classification shall be reduced unless it is demonstrated that he has not worked a sufficient number of years to warrant his present classification, taking into consideration the seniority system of the local and/or locals with which his local is being required to merge hiring halls, except that appropriate allowances shall be made for the prior effect of the division of the work.

2. Presently classified longshoremen have the right to request, upon a showing of good cause, that they be upgraded, which request shall be reviewed as hereinafter provided.

3. Gang members shall be referred to work on the basis of their seniority classification; that is, longshoremen with a higher seniority classification shall be offered job opportunities before longshoremen with a lower seniority classification, and not on the basis of race.

4. Gangs shall not be selected or worked on the basis of race.

5. When a gang foreman selects members of his gang, he shall make such selections offering job opportunities

to longshoremen with the highest seniority classification and qualifications before offering such job opportunities to longshoremen with a lower seniority classification and qualifications. Qualifications shall mean the ability to perform the job, and if a longshoreman has regularly worked the job in the past he shall be deemed qualified to work the job. A rebuttable presumption of good faith on the part of the gang foreman in making job assignments shall exist.

6. All persons who were regular, active gang foremen as of January 20, 1969 or who have been approved as a regular, active gang foreman since that date shall be eligible to be included on the list of qualified, regular gang foreman, who shall be selected for such list by the Review Committee, as hereinafter provided, on a non-discriminatory basis.

7. Gang foremen shall be selected to work on the basis of their gang's accumulated earnings on a day to day basis, as indicated by a list which shall be prepared and maintained daily.

The gang foreman with the least earnings for his gang shall be selected first to carry a gang.

Nothing in the preceding paragraph shall prejudice any gang foreman from being referred to work, other than in the capacity of gang foreman, in line with his seniority classification.

8. Each Seniority System in each Port shall contain a non-discriminatory provision relating to the requirements that must be met in order to gain future (or additional) seniority or to maintain existing seniority classifications. Each longshoreman shall be reclassified on an annual

basis within sixty (60) days following receipt of the work records from the ILA Welfare, Vacation and Pension Records for the preceding year, if he is entitled to be reclassified. The Review Committee, hereinafter provided for, shall constitute the committee to make such annual reclassifications.

9. One representative from each defendant local union which is required under this Order to merge hiring halls shall constitute a Review Committee to hear any grievance of any individual longshoreman that he has been improperly classified or that he has been improperly referred to work in violation of the common hiring hall plan and/or the final Order of this Court.

10. All defendant local unions shall file with the Clerk of this Court a full and complete report showing the common Seniority System and Hiring Hall Plan adopted by them pursuant to this Order and disclose the classification of each individual longshoreman by name. The plaintiff herein, or any local union and any individual longshoreman is granted leave to file in this Court any objections to the common Seniority System and Hiring Hall Plan within sixty (60) days after the filing of such report which related to him.

III.

COMMON SENIORITY SYSTEM AND HIRING HALL PLAN WHERE AT LEAST ONE LOCAL IN THE PORT DOING THE SAME KIND OF WORK DOES NOT HAVE AN EXISTING SENIORITY SYSTEM AND HIRING HALL PLAN

Where at least one local union in a port which has been ordered by this Court to merge hiring halls does not

presently have a seniority classification system, the following standards shall apply:

1. All longshoremen who have been classified by their local shall use as his seniority classification the classification which has been assigned to him under his present local's current seniority system.

2. The Review Committee shall devise a seniority plan for the common hiring hall which shall follow the existing plan or plans in the Port as near as possible and which shall not discriminate against any person or on account of race or color.

3. All longshoremen who have not been classified by their local union shall then be classified by the Review Committee under the newly devised seniority system for the common hiring hall.

4. No person's classification shall be reduced unless it is demonstrated that he has not worked a sufficient number of years to warrant his present classification, taking into consideration the seniority system of the local and/or locals with which his local is being required to merge hiring halls, except that appropriate allowances shall be made for the prior effect of the division of the work.

5. Presently classified longshoremen, including those longshoremen classified under paragraph three above, shall have the right to request, upon showing of good cause, that they be upgraded, which request shall be reviewed as hereinafter provided.

6. Gang members shall be referred to work on the basis of their seniority classification; that is, longshoremen with a higher seniority classification shall be offered job oppor-

tunities before longshoremen with a lower seniority classification, and not on the basis of race.

7. Gangs shall not be selected or worked on the basis of race.

8. When a gang foreman selects members of his gang, he shall make such selections offering job opportunities to longshoremen with the highest seniority classification and qualifications before offering such job opportunities to longshoremen with a lower seniority classification and qualifications. Qualifications shall mean the ability to perform the job, and if a longshoreman has regularly worked the job in the past, he shall be deemed qualified to work the job. A rebuttable presumption of good faith on the part of the gang foreman in making job assignments shall exist.

9. All persons who were regular, active gang foremen as of January 20, 1969 or who have been approved as a regular active gang foreman since that date, shall be eligible to be included on the list of qualified, regular gang foremen, who shall be selected for such list by the Review Committee, as hereinafter provided, on a non-discriminatory basis.

10. Gang foremen shall be selected to work on the basis of their gang's accumulated earnings on a day to day basis, as indicated by a list which shall be prepared and maintained daily. The gang foreman with the least earnings for his gang shall be selected first to carry a gang.

Nothing in the preceding paragraph shall prejudice any gang foreman from being referred to work, other than in the capacity of gang foreman, in line with his seniority classification.

11. Each Seniority System in each Port shall contain a non-discriminatory provision relating to the requirements that must be met in order to gain future (or additional) seniority or to maintain existing seniority classifications. Each longshoreman shall be reclassified on an annual basis within sixty (60) days following receipt of the work records from the ILA Welfare, Vacation and Pension Records for the preceding year, if he is entitled to be reclassified. The Review Committee, hereinafter provided for, shall constitute the committee to make such annual reclassifications.

12. One representative from each defendant local union which is required under this Order to merge hiring halls shall constitute a Review Committee to hear any grievance of any individual longshoreman, that he has been improperly classified or that he has been improperly referred to work in violation of the common hiring hall plan and/or the final Order of this Court.

13. All defendant local unions shall file with the Clerk of this Court a full and complete report showing the common Seniority System and Hiring Hall Plan adopted by them pursuant to this Order and disclose the classification of each individual longshoreman by name. The plaintiff herein, or any local union and any individual longshoreman is granted leave to file in this Court any objections to the common Seniority System and Hiring Hall Plan within sixty (60) days after the filing of such report which relates to him.

IV.

COMMON SENIORITY SYSTEM AND HIRING HALL PLAN WHERE NO LOCAL UNION IN THE PORT DOING THE SAME KIND OF WORK WHICH HAS BEEN ORDERED BY THIS COURT TO MERGE HIRING HALLS HAS A WRITTEN SENIORITY SYSTEM AND HIRING HALL PLAN

Where no Local Union in the Port doing the same kind of work which has been ordered by this Court to merge hiring halls has a written Seniority System and Hiring Hall Plan, the following standards shall apply:

1. The Review Committee, consisting of one representative from each defendant local union which is required under this Order to merge hiring halls, shall establish in such ports for such work a Common Seniority System and Hiring Hall Plan which is non-discriminatory as to race and color.

2. Such Seniority System and Hiring Hall Plan shall in all respects, consistent with conditions in the Port embody the standards set forth in either Paragraph II or Paragraph III of this Order.

V.

RECORDS AND REPORTING

A. Each Local shall maintain monthly records which reflect:

1. The name and address of each applicant for membership; the date on which he applied, whether or not he was admitted, and, if not, the reason he was not, but no

applicant shall be denied membership because of race or color.

2. A monthly record showing the total number of longshoremen referred by the local union.

3. A monthly record, on a weekly basis, showing the accumulated earnings of all gang foremen.

4. A monthly record showing the individual earnings for the prior month for all longshoremen.

5. Thirty (30) days after the merger of the hiring halls, and every six months thereafter for a total period of two (2) years, a record setting forth the racial composition of all gangs referred, the gang foreman and the company to which referred, shall be kept.

6. All reports required herein shall be racially identified.

If the West Gulf Maritime Association or any other organization maintains, or agrees to maintain such records or similar suitable records which substantially show the above, the defendant need not maintain such records if the West Gulf Maritime Association or other organization agrees to permit inspection of such records by the plaintiff, and has advised counsel for plaintiff thereof.

B. The merged Common Hiring Halls, as provided herein, shall submit to the plaintiff and to this Court:

1. Within thirty (30) days from the establishment of Common Hiring Halls, a seniority list denoting the name, local union and seniority classification of every person.

2. Every twelve (12) months thereafter, for a total period of two (2) years, an updated seniority list noting any changes in any longshoreman's seniority classification.

3. Thirty (30) days after the merger of the hiring halls and every six (6) months thereafter, for a total period of two (2) years, a report listing every person referred through the Common Hiring Hall, the Local Union through which he worked before the establishment of a Common Hiring Hall, and the total number of hours and earnings he received during the previous six months.

4. Thirty (30) days after the merger of the Hiring Halls, and every six (6) months thereafter for a total period of two (2) years, a report setting forth all applicants for membership in each local by name, race, address, and the disposition of their application.

C. Defendants will make all records, applications and other documents relevant to the provisions of this Decree available to plaintiff at the site where such items are kept for inspection, examination and/or copying; if so requested, defendants shall make copies thereof available to plaintiff at plaintiff's expense, but not so frequently as to impose an unreasonable burden or expense on defendants. The plaintiff shall also have the right to inspect the facilities of defendants during regular business hours.

In addition to the regular reports prescribed above, the defendants shall provide any other information relevant to the requirements of this Decree to counsel for plaintiff upon written request and at plaintiff's expense; but such requests shall not be made so frequently or in such detail as to impose an unreasonable burden or expense on defendants.

VI.

1. The defendant shall cease all discriminatory practices which occur at the Port of Freeport. Black employees

shall be permitted to work Dock A-5 without regard to race.

2. At the Port of Galveston, no longshoreman, or no group of longshoremen, shall have any limitation as to the stevedoring companies with which they are permitted to work. The provision in the Collective Bargaining Agreement limiting Local 329 to four stevedoring companies is hereby declared null and void, and defendants are prohibited from enforcing it or causing or attempting to cause any employer or group of employers from enforcing it.

3. In the Port of Brownsville, the work has been allocated on a 75-25% basis between the White and Black Locals respectively, which discriminatory practice shall cease.

VII.

REVIEW COMMITTEE

1. Provision has heretofore been made for a Review Committee with one representative from each defendant Local Union which is required under this Order to merge Hiring Halls. In order to insure continuity of such Committees, each defendant Local Union is hereby required to designate, in addition thereto, one Alternate. Each defendant Local Union shall certify to this Court in writing the name of its Representative and Alternate. In the event that either the Representative and/or Alternate fails, refuses, or becomes unable to serve for any reason, each defendant Local Union shall recertify to the Court its Representative and/or Alternate. In the event the Review Committee cannot agree on a Common Seniority System and Hiring Hall Plan or agree upon the proper classification of any individual, one Representative can

certify that fact to the Court, who in turn, at his discretion, will either decide the issue or appoint an Arbitrator to make a recommendation to the Court.

2. As a further guideline for each defendant Local Union, the Court finds and concludes and Orders each Review Committee, in the establishment of a common Seniority System and Hiring Hall Plan, to take into consideration the necessity for a stabilized work force in the Port with the technilogical changes and innovations already made and being made in the Industry, and their impact upon the job requirements of longshoremen in the future.

VIII.

To implement this Interlocutory Decree, the Court hereby appoints A. A. White as Arbitrator to assist the defendants in formulating written common hiring hall plans appropriate to each port and equitable to the longshoremen, consistent with the Court's "Memorandum" heretofore entered and with this Interlocutory Decree. In the event the defendant unions and their representatives are unable to agree on any particular matter or matters, the Arbitrator shall proceed to resolve these differences and shall file with the Court his reasons, together with a summary of the factors considered. The Arbitrator shall have the power to require any party to make available any facts or information which he may consider relevant to his consideration of the disputed matters.

IX.

This Court shall retain jurisdiction of this matter, with full power and authority to issue any additional Orders necessary to insure equal employment opportunities for

all ILA members, non-member referral candidates, or applicants therefor, without regard to race or national origin.

DONE THIS 1st DAY OF OCTOBER, 1973 at Brownsville, Texas.

/s/ REYNALDO G. GARZA
United States District Judge

APPROVED AS TO FORM:

BROCK & WILLIAMS

By: /s/ WARNER F. BROCK
Warner F. Brock
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By: /s/ ARTHUR J. MANDELL
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Chris Dixie
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ATTORNEYS FOR THE DEFENDANTS

UNITED STATES DEPARTMENT OF JUSTICE

By: /s/ DOUGLAS HURON
Douglas Huron
Washington, D.C.

ATTORNEY FOR THE PLAINTIFF

APPENDIX F

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Civil Action No. 69-B-3

UNITED STATES OF AMERICA, by
JOHN N. MITCHELL, Attorney General,
Plaintiff,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, an unincorporated association; SOUTH ATLANTIC AND GULF COAST DISTRICT, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, an unincorporated association; and Locals 1367, 1368 and 1372, I.L.A., Brownsville, Texas; Locals 872, 1231, 1271, 1273, 1330, 1331, 1525, and 1581, I.L.A., Houston, Texas; Locals 325, 1306, and 1610, I.L.A., Beaumont, Texas; Locals 307, 329, 851 and 1576, I.L.A., Galveston, Texas; Locals 1224, 1225, 1241, 1245, 1280 and 1281, I.L.A., Corpus Christi, Texas; Locals 1723 and 1818, I.L.A., Freeport, Texas; Locals 636, 991, 1405 and 1406, I.L.A., Texas City, Texas; Locals 440, 1029 and 1175, I.L.A., Port Arthur, Texas; Locals 341 and 814, I.L.A., Orange, Texas; Locals 1758 and 1763, I.L.A., Port Lavaca, Texas, unincorporated associations,
Defendants.

(Filed November 12, 1971)

Honorable John N. Mitchell, Attorney General, Jerris Leonard, Assistant Attorney General, David L. Rose, Andrew J. Ruzicho and John W. Davis, Attorneys, Department of Justice, Washington, D.C.; for Plaintiff.

Brock & Williams (Warner F. Brock), of Houston, Texas; for International Longshoremen's Association, South Atlantic and Gulf Coast District, International Longshoremen's Association, and Locals 1372, 872, 1231, 1271, 1330, 1331, 1525, 1581, 325, 1306, 1610, 851, 1225, 1241, 1245, 1281, 1723, 1818, 636, 991, 1405, 1406, 440, 1029, 1175, 341, 814, 1758 and 1763, I.L.A.;

Mandell and Wright (Herman Wright), of Houston, Texas; for Locals 1367, 307, 1576, 1224 and 1280, I.L.A.;

Michael Crawford, of Houston, Texas; for Local 329, I.L.A.

Dixie, Wolf & Hall (Chris Dixie), of Houston, Texas; for Local 1273, I.L.A.

D. J. Lerma, of Brownsville, Texas; for Local 1368, I.L.A.

MEMORANDUM

On January 20, 1969, in which was probably the last case filed by the Johnson administration, then Attorney General Ramsey Clark filed the above suit under Title VII of the Civil Rights Act of 1964, alleging a pattern

or practice of discrimination on grounds of race, color and national origin, in violation of said Act. The Defendants included the International Longshoremen's Association (hereinafter called the I.L.A.), the South Atlantic and Gulf Coast District of the I.L.A. (hereinafter referred to as District), and thirty-seven local general cargo longshoremen's unions chartered by the I.L.A., all of whom are labor organizations within the meaning of 42 U.S.C. 2000e(d), and all of whom are engaged in an industry affecting commerce within the meaning of 42 U.S.C. 2000e(e). As has been stated, the United States has alleged that the Defendant unions have engaged in a pattern or practice of discrimination on the grounds of race and national origin, more particularly that the Defendants have maintained local unions, hiring halls and gangs, which were classified and segregated on the grounds of race and national origin, and that this has resulted in the denying of equal working opportunities to Negro and Mexican-American longshoremen, because of their race or national origin, and that the District, in its contract negotiations with employers, has caused such employers to also discriminate on the grounds of race and national origin. The United States asks this Court to order a merger of the segregated locals and the discontinuance of separate locals, hiring halls and gangs based upon race and national origin, and for such further steps as would be necessary and proper.

With the exception of two Negro locals, one in Galveston and one in Brownsville, both with special problems that will be referred to further on in this opinion, all Defendants are opposed to the merger of locals that the Government proposes, and deny any violation of the Civil Rights Act of 1964.

It took some time to serve all Defendants and for answers to be filed, and with the exception of a few depositions and communications between the United States and some of the attorneys for the Defendants, very little was done in preparation for the trial of this case, until this Court, on May 12, 1970, set a pre-trial in this cause to be held in Houston, Texas, on Tuesday, June 23rd, and the trial of the same was set for Houston, as a place within this District convenient to counsel and witnesses, for July 13, 1970.

In preparation for trial, the depositions of officials of every one of the Defendants were taken.

At the pre-trial on June 23, 1970, the parties agreed to stipulate to as many facts as possible to shorten the time of trial. This was done and an extensive stipulation was filed by the parties, which has been very helpful to the Court.

At the pre-trial, the Defendants urged this Court to dismiss the cause of action on the grounds that the attempt by the United States to merge the local longshoremen's unions was a violation of their constitutional right of association under the First Amendment. The Court took the motion to dismiss on these grounds under consideration, and said it would carry it along with the case. The motion to dismiss on these grounds is now denied.

The Court heard testimony in this cause from July 13th through July 17, 1970, and from September 9th to September 17, 1970. During the trial, hundreds of exhibits, some of them rather bulky, were received in evidence, and the Court has had to read the same and assimilate their contents. The parties, at the conclusion of the trial, were allowed to file briefs, and a schedule

was set up, which, at the request of counsel, had to be extended. In the meantime, some of the Defendants asked to reopen the record for the filing of additional exhibits, all of which requests were granted.

The Defendants in this cause of action represent longshoremen and warehousemen who load and unload ships at warehouses in ports along the Texas Gulf Coast, at Orange, Beaumont, Port Arthur, Galveston, Texas City, Houston, Freeport, Port Lavaca, Corpus Christi and Brownsville. The membership of each local union in these ports is totally segregated on the basis of race or national origin. Of the thirty-seven local unions which are party Defendants, sixteen locals were for White longshoremen and have no Negro members, and nineteen were for Negro longshoremen and have no White members, and two locals are composed predominately of Mexican-American longshoremen.

Because of the Texas Right-to-Work Law, all the locals service and refer many non-members. In fact, it was surprising to find that many, many of the Longshoremen are not union members, but they work through the local union hiring halls. Under the contracts with the employers, the union gets a certain amount from the employer for every longshoreman, be he union member or not, some of this money going to the pension and welfare funds, and the balance to the coffers of the unions, and even non-union members are entitled to attain seniority as longshoremen and to participate in their pension and welfare plans.

While attempts were made to prove to this Court that a Negro could apply for membership in a White local and vice versa, it is obvious that a Negro does not apply

to a White local, and a White does not apply to a Negro local for membership. Negro longshoremen have to be referred out of a Negro local hiring hall, and White longshoremen are referred out of a White longshoreman's hiring hall. While there may have been exceptions in the past, they have been few and far between. The evidence shows that some coastwise general cargo locals have been merged with some deep-sea general cargo locals in their respective ports. The Negro coastwise general cargo locals have been merged with Negro deep-sea general cargo locals, and the White coastwise general cargo locals have been merged with White deep-sea general cargo locals, this happening since the filing of this action.

It has been stipulated that the I.L.A. chartered the locals on the basis of race, and there is no question that it has maintained these locals on the basis of race, has at all times been aware of their segregated nature and has done nothing to seek their merger, or to charter integrated locals since the passage of the Civil Rights Act.

Negro union officials who testified before the Court have urged the Court not to order a merger. They say that by the maintenance of "sister locals" in every port, the Negroes, by having their own unions and their own union officials, have been able to better themselves by being able to hold high positions in their locals, and have been recognized in the community as a separate, powerful voice for the Negro communities, and has attained for them and the Negro people of the community, a standing which they could not have otherwise attained. The Court believes that they are correct in this assumption, but the ultimate issue before the Court is whether this pattern or practice of having segregated locals is

keeping longshoremen, be they Black or White, from equal working opportunities on account of a longshoreman's race or national origin. With the exception of the port of Brownsville, generally the longshoremen's work is divided between the White and Negro locals on a fifty-fifty basis. On its face, this would seem to be a fair shake for the races, but this does not tell the whole story. If in any port there are one hundred Whites available to work on the waterfront as longshoremen and two hundred Negroes, and the work is divided fifty-fifty between the locals, it is obvious that the one hundred Whites will work more hours than the Negroes. The fifty-fifty rule would be ideal if there were an equal number of White longshoremen to Negro longshoremen in every port, but this is not the case. The same situation would exist if instead of one hundred White and two hundred Negro longshoremen, there would be two hundred White and one hundred Negro longshoremen in a given port. In that situation, the Black longshoremen would work more hours than the White. While the Civil Rights Act of 1964 was passed to aid Negroes and other minorities, it was passed to help Whites as much as Negroes, if their civil rights are being violated, and this Court can foresee where in many situations, now and in the future, the Whites will be asking for the protection of Title VII of the Civil Rights Act of 1964.

The Defendants opposing the proposed merger of the "sister locals" have argued vehemently that the Negros, whom the Government assumes to protect by this cause of action, are going to be the losers if the Government prevails; that the Negroes in the several ports involved in this lawsuit are getting 50% of the work, even though the racial composition of the communities is far less than

50%. They urge upon the Court that the Government in the construction industry has brought forth the so-called Philadelphia Plan, seeking job opportunities on the basis of the racial ratio in the area and community, and that if this Plan were to be put into effect, Negroes would only have 19% of the work in Houston, 21% of the work in Galveston, 30% in Beaumont, 27% in Port Arthur, 25% in Orange, 12% of the work in Freeport, 5% of the work in Corpus Christi, and only 1% of the work in Brownsville. They are off target in their argument. It is not the racial composition of the community that should control, but the number of Blacks and Whites that make themselves available for longshore work that counts.

From the many Exhibits before the Court, it is obvious that even under the fifty-fifty rule, Negroes, and in some cases Mexican-Americans, having been segregated on the basis of their race or national origin, have been forced to accept a diminished opportunity to earn wages, receive union benefits, work better cargo and otherwise enjoy employment opportunities solely on the basis of their race. A comparison of the earnings of segregated "sister locals" shows that not only the total earnings of the Negro locals, but also the earnings of individual Negro longshoremen, are less than those that work out of the White local.

Much of this disparity is due to the earnings of individual workers on the waterfront who are members of the locals, but who are hired directly by the employers, and who are not referred by the locals, most of whom are Whites, such as the so-called Gearmen. This situation has been known for a long time, and yet the contracts entered into by and between the industry and the longshoremen have not attempted to correct this situation. However, in fairness to the unions, it must be said that they have tried,

in most cases, most diligently to give 50% of the work to the Whites and 50% of the work to the Blacks, the trouble lying in the basic fact that the 50% given to the Negroes has had to be divided amongst a greater number of Negro longshoremen.

The Government has urged in this case that the very existence of segregated locals is a "per se" violation of Title VII of the Civil Rights Act of 1964. The Government has already been successful in a similar case in upholding this theory. *United States of America v. International Longshoremen's Association, Atlantic Coast District, International Longshoremen's Association, and Locals 829 and 858, I.L.A., Baltimore, Maryland,* D. Md. 1970, 319 F.Supp. 737. This case has been cited with approval by this Circuit in *United States of America v. Jacksonville Terminal Company,* ____F.2d____, (August 31, 1971). In that case, the District Court had held that having segregated locals was not a "per se" violation of Section 703(c) of the Act, 42 U.S.C.A. § 2000e-2(c). *United States of America v. Jacksonville Terminal Company,* 316 F.Supp 567 (M.D. Fla. 1970). Our Circuit, speaking through Judge Dyer, in reversing the case said:

> "Contrary to the allegations made by the Unions, we find that their locals are not mere 'social clubs' having no influence in national union policy or practice. We conclude that the District Court erred in refusing to hold that the failure to consolidate the locals violates section 703(c) of the Act, 42 U.S. C.A. 2000e-2(c). See *United States v. Sheet Metal Workers Local 36, supra* at 127-129; *Local 53, International Association of Heat & Frost Insulators & Asbestos Workers v. Vogler, supra* at 1051-55; *United States v. International Longshoremen's Asso-*

ciation, D. Md. 1970, 319 F.Supp. 737, 741-42; *Hicks v. Crown Zellerbach Corp.,* E.D. La. 1970, 310 F.Supp. 536; *United States v. Local 189, United Papermakers & Paperworkers,* E.D. La. 1969, 301 F.Supp. 906, 919, *aff'd,* 5 Cir., 416 F.2d 980."

If the maintenance of segregated locals is a "per se" violation of the Civil Rights Act, there the matter ends, and the relief sought by the Government, as far as ordering the merger of locals in this case, has to be granted. There is no question that segregated locals were so chartered and are still maintained. See also, *Musicians' Protective Union Local No. 274, A.F. of M., and James Adams, on his own behalf and on behalf of all others similarly situated v. The American Federation of Musicians of the United States and Canada,* E.D. Pa. 1971, 329 F.Supp. 1226.

However, this Court cannot believe that it was the intention of Congress to condemn all segregated locals. If it were, they could have easily said so. The Government must still show that the maintenance of segregated locals constitutes a pattern or practice depriving individuals of working opportunities, because of their race or national origin. However, in this case, the Government has discharged this burden.

In the case of the port of Brownsville, the White local, which has many Mexican-American members, has been given 75% of the work, and Local 1368, a Negro local, has been given only 25% of the work, and naturally, Local 1368 feels that they should be getting 50% of the work, and is therefore in favor of merger. A history of the Brownsville controversy shows that many of the Negro longshoremen seeking work in the port of

Brownsville were recruited from other ports, and the local longshoremen resisted their coming down to take their jobs. The controversy resulted in the establishment of the seventy-five—twenty-five rule. The situation in Brownsville only serves to point out the inequities that can result from segregated locals.

The undersigned Judge is a lifetime resident of Brownsville, Texas, and was present when the first ship came up the Brownsville ship channel to the port of Brownsville, and even though not in the record in this case, if I may be permitted, I will recall the situation of longshoreman work in the port of Brownsville, as I remember it. When having a deep-water port at Brownsville and Port Isabel, Texas, was to become an accomplished fact, a group of men, mostly Anglo, applied for a charter to the I.L.A. The original fight was not so much between Whites and Blacks, as it was between Anglos and Mexican-Americans, who at first were having a hard time getting into the local. There were few Negroes living in the city of Brownsville, and the few that live there had not been engaged in longshore work. Most of them worked for the railroads, a few were hotel porters, some were barber shop shoeshine boys, and one worked for the Coca Cola Bottling Company. When the Whites applied for a charter, a group of Negroes, in line with the practice of the I.L.A. to have "sister locals", applied for a charter for a Negro local. Most of the membership of the Negro local had to come from outside the Brownsville-Port Isabel area. The local people comprising the White local and those working out of its hiring hall, naturally resisted the influx of outsiders who took their jobs away from them. This Court is convinced that if the practice of having segregated locals had not been in

effect, and the few Negroes who were available for longshore work in the port of Brownsville had been allowed to join the White local, the Brownsville situation would never have arisen.

The concern of the Government in this case with the situation of Mexican-Americans, has been mainly brought about by Local 1576 in Galveston. None of its members are Negro, and there are a few Anglos, and the membership is composed mainly of Mexican-American longshoremen. The charter of this local provides that its members can only work bananas and green fruit. This type of work has been drastically reduced, and the members of Local 1576 have very little work at present. It has been testified that the work of unloading bananas and green fruit is the most difficult, physically, of work done by other deep-sea locals. We have a situation where the members of Local 1576, most of whom are Mexican-American as has been stated above, are able-bodied individuals wanting to do longshore work, but being limited in the opportunity of doing this type of work, because of its charter. It has been shown that they must work out of other hiring halls, instead of their own, but when they appear at said hiring halls, they compete with the so-called "casuals", who are not union members. Testimony was received that Local 1576 has taken up the matter of the restriction in their charter with both the District and I.L.A., but the charter remains unchanged. They are not even included in the West Gulf Maritime Association Agreement, even though this has been requested.

There is no question that individuals belonging to 1576 have been denied an opportunity to work as longshoremen, because of the restrictions on their charter. Local 1576 is not seeking a merger, but apparently are demand-

ing an equal right to longshore work in the port of Galveston.

Another local that has joined hands with the Government in seeking a merger of the locals is Local 329. Local 329, a Negro local, is only allowed by the I.L.A. to work for four stevedoring companies. At one time, these companies had a lot of business, but the type of cargo they handled has now dwindled, and Local 329 finds itself with very little work. The problems caused by this situation would not exist if all longshoremen at the port of Galveston belonged to one local. Local 329 has for years been asking the District and the I.L.A. for relief, but to no avail. The stevedoring companies have also joined in asking that Local 329 be given more work.

The basic finding that the Court is making in this cause is that the Defendants have chartered and still maintain locals on a segregated basis, that the prevalent rule of dividing the work fifty-fifty between the White and Negro locals violates Title VII of the Civil Rights Act of 1964, because it deprives longshoremen, be they Black or White, Anglo, Mexican-American or Negro, equal working opportunities depending on which group is in the majority in the different ports, and that this will be a continuing violation in the future.

A merger of locals brings with it many problems, which have to be resolved in the issuing of an equitable decree.

The evidence shows that locals own their own property, on which are housed their hiring halls, these properties not being of the same value, as amongst "sister locals". The question of seniority is also present. Although evidence shows that the I.L.A. and the District have insisted

that every local have a seniority system, no real attempt at having the same seniority system within every local has been undertaken. Since no standard seniority system has been in practice in all the locals, this poses a terrific problem in modeling an equitable decree. The basic hours the longshoremen have to work to achieve seniority have differed greatly from one local to another. Since seniority and the hours worked affect the pension and welfare rights of individual longshoremen, the Court has to be mindful of the great necessity of protecting the rights of those who have spent their lives on the waterfront, as compared to those who only work on the waterfront as a sideline.

Nor is this Court satisfied that the only solution to the problem must include a merger of the locals, for a plan or scheme can be devised that would eradicate the inequity of the basic finding made above, unless the opinion in *United States v. Jacksonville Terminal Company, supra,* dictates such a course.

This Court finds that some of the relief sought by the United States is forthcoming. The Defendants, I am sure, do not agree with this conclusion, and an appeal is almost certain.

The Government has submitted to the Court a proposed decree, with which this Court is not in agreement, as in my view, parts of the proposed decree do violence to the Civil Rights Act and my interpretation of the intent of Congress. A decree that orders the merger of the locals will, of necessity, be different than a decree under the Act that does not so provide. I, therefore, certify under 28 U.S.C. 1292(b) that my findings involve a controlling question of law, as to which there is substantial ground

for difference of opinion, and an immediate appeal may materially advance the ultimate termination of this litigation, and it is the hope of the undersigned that the Honorable Circuit Court of Appeals for the Fifth Circuit will accept an appeal under 28 U.S.C. 1292(b), to determine whether the record in this case entitles the United States to relief, and whether such relief should include an order of merger of the locals involved.

Counsel for the parties will meet to try to formulate a decree for entry in this cause, upon a denial of an appeal under 28 U.S.C. 1292(b), or a final ruling of the Circuit Court of Appeals for the Fifth Circuit, and within sixty days of either event, either submit a proposed decree agreeable to all, or inform the Court of their inability to submit such decree, with their analysis of the points they cannot agree upon.

The Clerk will send copies of this Memorandum to counsel for the parties.

DONE at Brownsville, Texas, this 12th day of November, 1971.

By: /s/ REYNALDO G. GARZA
Reynaldo G. Garza
United States District Judge